

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

J.A. SMITH HEATING AND AIR
CONDITIONING, INC.¹

Employer

and

SHEET METAL WORKERS' INTERNATIONAL
UNION, AFL-CIO, LOCAL 19²

Petitioner

Case 4–RC–20709

and

STEAMFITTERS LOCAL UNION NO. 420 of the
UNITED ASSOCIATION OF JOURNEYMEN &
APPRENTICES OF THE PLUMBING AND
PIPEFITTING INDUSTRY OF THE
UNITED STATES AND CANADA

Party in Interest

**REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION**

The Employer, J.A. Smith Heating and Air Conditioning, installs and services heating, ventilation and air conditioning (HVAC) systems. The Petitioner, Sheet Metal Workers Local 19, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of the Employer's sheet metal installers.³ The Party in Interest, Steamfitters Local 420, currently represents a unit of the Employer's employees who primarily perform work within its jurisdiction, and the Petitioner seeks to exclude these employees from the unit. The Employer contends that the petitioned-for unit is inappropriate and that the smallest appropriate unit would include all of the Employer's field employees, i.e.

¹ The Employer's name appears as amended at the hearing.

² The Petitioner's name appears as amended at the hearing.

³ The Petitioner initially petitioned for a unit of Installers and Service Technicians, but at the hearing the Petitioner amended its petition to include only sheet metal installers.

Installers, Assistant Installers, and Service Technicians, including those employees currently represented by Steamfitters Local 420. The Petitioner would exclude from the unit a Truckdriver, a Plant Clerical/Expeditor, and Assistant Installers Scott Smith and Christopher Smith, the sons of Jeffrey A. Smith, the Employer's President, while the Employer would include these employees. The Petitioner's proposed unit would include about eight employees, and the Employer's proposed unit would consist of about 25 employees. A Hearing Officer of the Board held a hearing, and the parties filed briefs with me.

I have considered the evidence and arguments presented by the parties concerning the composition of the unit, and I have concluded that the unit sought by the Petitioner is not appropriate. I find that the smallest appropriate unit consists of the Employer's Installers, Assistant Installers, Service Technicians, and the Truckdriver. In agreement with the Petitioner, I find that the Plant Clerical/Expeditor and the sons of the Employer's President should be excluded.

In this Decision, I will first provide a brief overview of the Employer's operations. Then, I will review the factors that must be evaluated in determining whether the unit sought by the Petitioner is an appropriate unit, and whether the Truckdriver, the Plant Clerical/Expeditor, and the Employer's President's sons should be included in the unit. Finally, I will present in detail the facts and reasoning that support my conclusions as to each issue.

I. OVERVIEW OF OPERATIONS

The Employer's main office and shop is located in Warminster, Pennsylvania. About 70 percent of the Employer's work is residential, and the remaining 30 percent is commercial. The Employer's business consists of approximately 50 percent new construction, 20 percent "add-on" renovations, and 30 percent service work.

President Jeffrey A. Smith and General Manager John Ragg⁴ are responsible for the overall supervision of the employees. The Employer currently employs about eight Installers, seven Assistant Installers, eight Service Technicians, one Truckdriver, and one Plant Clerical/Expeditor.⁵ Steamfitters Local 420 represents about three Installers, one Assistant Installer, and all of the Service Technicians. The remaining employees are unrepresented. According to Smith, the Employer makes the decision as to whether an employee is covered by the collective-bargaining agreement in conjunction with a Steamfitters Local 420 business agent, based on the type of work that the employee performs. Thus, an employee will become part of the Steamfitters Local 420 bargaining unit if he primarily performs refrigerant piping, control voltage, equipment setting, and service technician work.

⁴ At the hearing, the parties stipulated that Ragg is a supervisor within the meaning of Section 2(11) of the Act.

⁵ The Employer also employs one Dispatcher, Lisa Burns. No party contends that she should be included in the unit.

II. RELEVANT LEGAL STANDARDS

The Appropriate Unit

The Board's procedure for determining an appropriate unit under Section 9(b) is first to examine the petitioned-for unit. If that unit is appropriate, then the inquiry ends. *Dezcon, Inc.*, 295 NLRB 109, 111 (1989). If the petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties, but it also has the discretion to select an appropriate unit that is different from the alternative unit proposals of the parties. See, e.g., *Bartlett Collins Co.*, 334 NLRB 484 (2001); *Overnite Transportation Co.*, 331 NLRB 662, 663 (2000). The Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employee classifications. See, e.g., *R&D Trucking, Inc.*, 327 NLRB 531 (1999); *State Farm Mutual Automobile Insurance Co.*, 163 NLRB 677 (1967), *enfd.* 411 F.2d 356 (7th Cir. 1969). It is well settled that the unit need only be *an* appropriate unit, not the most appropriate unit. *Morand Brothers Beverage Co.*, 91 NLRB 409, 419 (1950), *enfd.* on other grounds 190 F.2d 576 (2d Cir. 1951). In determining whether a group of employees possesses a separate community of interest, the Board examines such factors as the degree of functional integration between employees, common supervision, employee skills and job functions, interchange of employees, contact among employees, fringe benefits, and similarities in wages, hours, benefits, and other terms and conditions of employment. *Home Depot USA*, 331 NLRB 1289 (2000); *Esco Corp.*, 298 NLRB 837 (1990).

The Board has long held that units in the construction industry may be appropriate on the basis of either a craft unit or departmental unit, so long as the requested employees are a clearly identifiable and homogeneous group with a community of interest separate and apart from other employees. *Brown & Root Braun*, 310 NLRB 632, 635 (1993); *Dick Kelchner Excavating Co.*, 236 NLRB 1414 (1978); *R.B. Butler Inc.*, 160 NLRB 1595, 1598-1599 (1966). A "craft unit" is defined as a distinct and homogenous group of skilled journeymen, apprentices, and helpers who primarily perform tasks requiring craft skills, tools, and equipment, which are not performed by others. *Burns & Roe Services Corp.*, 313 NLRB 1307 (1994). In *Burns & Roe*, the Board stated that in determining whether a group of employees constitutes an appropriate craft unit the Board looks to: whether the petitioned-for employees participate in a formal training or apprenticeship program; whether the work is functionally integrated or overlaps with other employees; whether the employer assigns work according to need, rather than on a craft or jurisdictional basis; and whether the petitioned-for employees share common interests with the other employees, including wages, benefits and cross-training. 313 NLRB at 1308. The fact that employees may perform duties outside of their classification does not render their inclusion in the unit inappropriate when these duties are secondary in nature. *Dick Kelchner Excavating Co.*, *supra*, at 1415. In some circumstances, the Board has found appropriate separate units of HVAC sheet metal employees, as well as separate units of HVAC service technicians, where the employees comprise a distinct craft unit with a community of interest separate and apart from other employees. *Schaus Roofing and Mechanical Contractors, Inc.*, 323 NLRB 781 (1997); *United Operations, Inc.*, 338 NLRB No. 18 (2002). In other circumstances, the Board has found appropriate a combined unit of service employees and installation employees. *R.L. Stott Co.*, 183 NLRB 884 (1970).

Relatives of Owners and Managers

Section 2(3) of the Act excludes from the protection of the Act “any individual employed by his parent or spouse.” In *NLRB v. Action Automotive, Inc.*, 469 U. S. 490, 495 (1985), the Supreme Court affirmed the Board’s practice of excluding from a bargaining unit close relatives of the owners of a closely held corporation, even in the absence of special job related benefits.

III. FACTS

A. Bargaining History

The Employer has been a party to multi-employer 8(f) collective-bargaining agreements with Steamfitters Local 420 for about 10 years.⁶ The current agreement, which is effective from October 1, 2001 to April 30, 2004, states that the Employer recognizes Steamfitters Local 420 as the bargaining agent of all, “journeymen, servicemen and installers, including working foremen and apprentices, of residential heating and air conditioning equipment.” In practice, however, the Employer has not applied the contract to all of the employees that fit that description, but only to about 12 employees who primarily perform traditional Steamfitters Local 420 jurisdictional tasks.⁷

B. Job Functions and Skills

Installers, Assistant Installers, and Service Technicians

The Installers and the Assistant Installers are primarily responsible for installing heating and air conditioning equipment in new or existing buildings. For new construction installation, Installers first must perform “rough in” work, which entails installing electrical wiring, refrigerant piping, ducts, plumbing, and drain lines. Once this work is completed, the Installer installs the HVAC equipment, controls, thermostats, registers, return air grills, heat pumps, and outdoor condensing unit. For existing buildings, Installers perform add-on or replacement HVAC installation, which is similar to new construction installation except that they reuse some of the existing utilities and replace malfunctioning components. Installers also make any necessary repairs to equipment involved in new construction, replacement or add-on installation. Assistant Installers support Installers in their work.

Service Technicians perform repairs and maintenance checks on existing heating and air conditioning systems. After being dispatched to a customer site, the Service Technician surveys the HVAC system and determines what needs to be replaced and what can be reused. If the system is repairable, the Service Technician provides the customer with an estimate for repairing

⁶ The Employer is a member of an informal multi-employer bargaining group, which negotiated the contract. The parties stipulated that it is a Section 8(f) agreement.

⁷ The following employees are covered by the Employer’s contract with Steamfitters Local 420: Service Technicians Thomas Geisheimer, Edward Gloor, Richard Goodwill, Stephen Kummerling, Gary Marsh, Giovanni Milano, John Polachek, and Stephen Ruczynski, Installers Jeffrey Beeco, Donald Silk, and Thomas Standen, and Assistant Installer Michael Nimmo.

the equipment and, if the customer accepts the estimate, the Service Technician then performs the repairs. If the Service Technician determines that the system is not repairable, he prepares an estimate for the customer to purchase a replacement system. Installers generally install the replacement HVAC systems, but all Service Technicians have, at times, installed replacement HVAC systems and add-on HVAC systems.

The Employer classifies its field employees as Installers, Assistant Installers, or Service Technicians depending on the work that they primarily perform, but many field employees perform similar job functions. The Employer assigns tasks to its field employees according to its needs and employee skill and availability, rather than solely by job classification.

The traditional sheet metal craft entails balancing and ductwork,⁸ while traditional steamfitters' craft work consists of pipefitting, gas piping, hydronic piping, and refrigerant work. The Employer's Installers, Assistant Installers, and Service Technicians have all worked on both commercial and residential projects, and they share common skills. The Service Technicians' work sometimes requires more sophisticated tools than the Installers' work, such as electrical meters and refrigerant gauges.

None of the Employer's field employees exclusively performs sheet metal craft duties or steamfitting craft work.⁹ All of the field employees have performed sheet metal work and have installed piping, balanced duct systems, and performed electrical wiring, taping, plastering, masonry, painting, carpentry, insulation, and laboring work. Most of the employees perform plumbing work related to the HVAC systems, and all but one of the employees has set equipment in place. About six Installers and five Assistant Installers spend approximately 70 percent of their time performing sheet metal installation.¹⁰ One Installer, Jeffrey Beeco, spends about 50 percent of his time performing sheet metal installation. Two employees spend approximately 30 percent of their time performing sheet metal work and the remainder of their time performing traditional Steamfitters' craft work.¹¹ The remaining field employees spend roughly 5 to 10 percent of their time performing sheet metal work.

Truckdriver

Truckdriver Andrew Piskei delivers paperwork, materials, and parts to Service Technicians and Installers. He also orders parts and equipment after researching the prices. Piskei occasionally performs various tasks normally performed by field employees including balancing duct systems, setting equipment, refrigerant recovery, minor duct repairs, landscaping repairs, electrical wiring, taping, plastering, masonry, painting, carpentry, and insulation, and he has repaired clogged condensate lines.¹² Piskei performs sheet metal fabrication and installation work for about 10 percent of his time.

⁸ Ducts are primarily made out of galvanized sheet metal, but they may also be made out of fiberglass.

⁹ According to Jeffrey Smith, there is not enough traditional Steamfitters' craft work to limit employees represented by Steamfitters Local 420 to that type of work.

¹⁰ These employees are Installers Dennis Burkel, Joshua Evens, Brian Mabry, Harold Naylor, Ian Seals, and Donald Silk and Assistant Installers Ronald Cline, Jorge Murria, David Sands, Scott Smith, and James Toner. Approximately 14 Installers and Assistant Installers perform sheet metal fabrication.

¹¹ These employees are Installer Thomas Standen and Assistant Installer Michael Nimmo.

¹² The record does not indicate what percentage of Piskei's time is spent performing such duties.

Plant Clerical/Expeditor

Plant Clerical/Expeditor Carolyn Lynch is responsible for ordering materials and ensuring that all contracts are signed. She uses a computer to keep track of records, purchase orders, equipment, and materials. She also assists General Manager John Ragg in scheduling assignments to field employees. Lynch does not work in the field or in the shop, and she does not use tools.

C. Training and Skills

Field employees are generally trained on the job. There is no evidence that the sheet metal installers participated in a traditional apprenticeship program or achieved journeyman status in the sheet metal craft. There is no formal apprenticeship program required for employees represented by Steamfitters Local 420. The Employer has the tools available for all employees to balance duct systems but does not require its employees to become certified air balancers.

Under the collective-bargaining agreement between the Employer and Steamfitters Local 420, the job classifications are denoted as Class A Residential Mechanics, Residential Mechanic Trainees, and Residential Helpers. Class A Residential Mechanics must be capable of servicing and installing without assistance, electric controls, air cleaners, domestic steam and hot water boilers, warm air furnaces, central air conditioning, humidifiers, clock thermostats, controls, heat pumps, gas piping, refrigerant piping, and condensate lines. Under the contract, the Residential Mechanic Trainees may enter into a two-year training program, but there is no evidence as to whether any of the Employer's employees have done so.

D. Contact, Integration, and Interchange

The Installers, Assistant Installers, and Service Technicians work predominantly in the field at customer sites rather than at the Employer's premises. The field employees are only present at the Warminster shop in the mornings, for a combined total of about eight hours per week, to fabricate materials when something unusual is needed.¹³ Field employees sometimes work together in crews for installation work.

Truckdriver Piskei has frequent contact with the field employees in making his daily deliveries and pick-ups. Piskei also interacts with Plant Clerical/Expeditor Lynch concerning inventory needs. Lynch works in the Warminster office and is in daily contact with the field employees by telephone. If a field employee requires a certain part, he will call Lynch to ask whether the Employer has the part in stock.

As noted above, there is some interchange among the field employees. Some Service Technicians have regularly performed installation work, and Installers have performed service work. For instance, Installer Jeffrey Beeco spends approximately 50 percent of his time engaging in add-on replacement installation work and the other 50 percent performing service

¹³ For example, an employee may need to cut a pipe or duct to a particular size.

work. Service Technician John Polachek performs the majority of the Employer's humidifier installations and on numerous occasions has performed HVAC installations himself or assisted Installers with their installation work. Other Service Technicians who are represented by Steamfitters Local 420, including Giovanni Milano, Steve Ruczynski, and Tom Geisheimer, perform some installations. Installer Donald Silk, who is represented by Steamfitters Local 420, spends approximately 70 percent of his time performing sheet metal work.

E. Conditions of Employment and Labor Relations Policies

All employees are paid on an hourly basis, and compensation varies considerably among employees according to their skill and experience. The field employees who are represented by Steamfitters Local 420 receive wages and fringe benefits according to the collective-bargaining agreement between the Employer and Steamfitters Local 420.¹⁴ In general, the field employees represented by Steamfitters Local 420 are paid at a higher rate than the other field employees, although some non-represented employees are paid more than some represented employees. Installers are paid between \$17 and \$20 per hour, Assistant Installers are paid between \$5.65 and \$16.50 per hour, Service Technicians are paid between \$13.06 and \$26.49 per hour, the Truckdriver is paid \$14.50 per hour, and the Plant Clerical/Expeditor is paid \$12.25 per hour.¹⁵

Pursuant to the collective-bargaining agreement, employees represented by Steamfitters Local 420 receive various fringe benefits including health care coverage, paid holidays, paid vacation, and a retirement plan. All of the other employees receive benefits that are comparable, but not identical, to those of the represented employees.¹⁶ All employees receive the same paid holidays and may participate in the Employer's 401(k) retirement plan and a health care plan. Unlike other employees, those who are represented by Steamfitters Local 420 accrue seniority. While there is a formal grievance and arbitration procedure for employees represented by Steamfitters Local 420, the Employer has an informal grievance procedure and no right to arbitration for non-represented employees.

The same labor relations policies and work rules apply to all employees. The working hours are similar with the same opportunities for overtime work for all employees. All employees except the Expeditor/Plant Clerical wear company uniforms. The Employer provides company vehicles to Service Technicians, Installers, and the Truckdriver.

¹⁴ President Jeffrey Smith testified that some Union members are paid more than required under the contract.

¹⁵ Specifically, employees represented by Steamfitters Local 420 are paid the following hourly rates: Geisheimer- \$27.49; Gloor- \$26.49; Kummerling- \$22.06; Silk- \$22; Milano- \$21.66; Polachek- \$20.66; Ruczynski- \$20; Standen- \$19; Beeco- \$18.66; Goodwill- \$16; Nimmo- \$14.93; and Marsh- \$13.06. The non-represented employees are currently paid at the following hourly rates: Naylor- \$20; Seals- \$18.75; Mabry- \$17.75; Burkel- \$17; Cline \$16.50; Evens- \$16; Sands- \$13; Murria- \$12; and Toner- \$7.50. Toner is a high-school student.

¹⁶ There are a number of differences between the fringe benefits of employees who are represented by Steamfitters Local 420 and those who are not represented. Employees represented by Steamfitters Local 420 receive individual and dependent health care coverage under a Blue Cross/Blue Shield Personal Choice Health Plan, while all other employees receive individual coverage under Keystone HMO but must pay for coverage for their dependents. The Employer contributes \$1 to the Steamfitters Local 420 Supplemental Retirement Plan for each Union member. Employees covered by the collective-bargaining agreement receive a shift differential of 30 cents per hour for any shift beginning after 4:00 p.m. and either a hot meal or \$5 in lieu of a meal for working three hours of overtime, while other employees do not enjoy such benefits.

F. Supervision

President Jeffrey A. Smith and General Manager Ragg oversee the Employer's daily operations. Ragg is responsible for scheduling all employees, assigning their work, and overseeing their work performance.

Scott Smith and Christopher Smith

Scott Smith and Christopher Smith are both Assistant Installers and are the sons of the Employer's President, Jeffrey Smith. According to the most recent Dun and Bradstreet Business Information Report, of which I take administrative notice, Jeffrey Smith owns 100 percent of the Employer's capital stock. Christopher Smith is a 17 year-old full-time student who works about 8 to 10 hours per week for the Employer. Scott Smith is 18 years old and works for the Employer full-time. Scott Smith is paid \$8 per hour, while Christopher Smith is paid \$5.65 per hour. They do not reside with their father, and like all other employees they are supervised by General Manager Ragg.

IV. ANALYSIS

A. Field Employees

The sheet metal installers sought by the petition do not constitute a craft unit. They did not participate in formal training or apprenticeship programs and they are not in a separate department. Most critically, there is significant job overlap between the employees who primarily perform sheet metal work and the other field employees. Thus, no employee exclusively performs installation or service work; all of them perform both types of work in varying degrees. The Employer assigns tasks to its employees according to its needs and skills rather than following strict craft lines since its employees have acquired shared skills in both service and installation. Although the Service Technicians represented by Steamfitters Local 420 sometimes use some more sophisticated tools, the record does not demonstrate that their skills are very different than those of the other employees.

The petitioned-for employees also do not share a community of interest separate from other field employees. In addition to the significant overlap in skills and duties, all of the employees are commonly supervised by Ragg and Jeffrey Smith. The field employees all wear the same uniforms and have use of company vehicles, and they have contact with each other when they are at the shop. While Steamfitters Local 420 employees receive generally higher wages and somewhat different fringe benefits, these differences are not compelling.

Although the collective-bargaining history between the Employer and Steamfitters Local 420 militates in favor of finding the petitioned-for unit appropriate, this factor is not determinative. While the Board accords substantial weight to a prior history of collective bargaining, the Board does not always give conclusive weight to this history, especially where it is contrary to established Board policy concerning the scope and composition of bargaining units. *A.C. Pavement Striping Co.*, 296 NLRB 206 (1989); *General Electric Company (River*

Works), 107 NLRB 70, 72 (1953). In this case, the significance of the bargaining history is outweighed by other factors indicating that only an overall unit of field employees is appropriate, such as combined supervision, interchangeability of functions, and common skills. Moreover, the bargaining history itself is somewhat inconclusive in this case. In this regard, the collective-bargaining agreement indicates that it covers all of the Employer's installers and service employees, but in practice the Employer has applied the contract to only a portion of these employees.¹⁷ Additionally, although there is a bargaining history between the Employer and Steamfitters Local 420, there is no bargaining history for the employees sought by the petition. See *Johnson Controls, Inc.*, 322 NLRB 669, 672 (1996).

Based on the foregoing, I find that a unit limited to sheet metal installers is not appropriate because the record fails to establish that they constitute a skilled and homogeneous craft unit or possess a community of interest separate and apart from other field employees. Rather, the record establishes that all of the Employer's field employees share a community of interest and should be included in the same unit. Accordingly, the petitioned-for unit is inappropriate. *Johnson Controls, Inc.*, supra; *Brown & Root Braun*, supra, 310 NLRB at 635; *Boudreaux's Drywall, Inc.*, 308 NLRB 777, 779 (1992); *New Enterprise Stone & Lime*, 172 NLRB 2157 (1968). Cf. *CCI Construction Co.*, 326 NLRB 1319, 1322-1323 (1998); *Schaus Roofing*, 323 NLRB 781 (1997).¹⁸

B. Truckdriver

Truckdriver Piskei regularly delivers paperwork, materials, and parts to Service Technicians and Installers, and he also researches parts and equipment prices and orders parts. He performs various miscellaneous field employee tasks, including sheet metal fabrication and installation. Considering that the Truckdriver has common supervision, frequent contact, and some shared tasks with Installers and Assistant Installers, I find that he shares a community of interest with the other employees in the appropriate unit, and I shall include him in the unit.¹⁹

C. Plant Clerical/Expeditor

Although the Plant Clerical/Expeditor has daily contact with the field employees by telephone and shares common supervision, Lynch has completely different job functions than the Installers, Assistant Installers, Service Technicians, and Truckdriver. She does not work in the field or use tools, and she is paid far less than the vast majority of them. Accordingly, I find that

¹⁷ Indeed, the fact that the agreement by its terms covers all installers and service employees lends support to the finding that a combined unit of Installers, Assistant Installers, and Service Technicians is an appropriate unit.

¹⁸ Those cases, which found separate units of sheet metal employees to be appropriate craft units, are distinguishable. In *CCI*, the Board found that the Employer consistently organized its jobsites along craft lines. In *Schaus Roofing*, although the employees in different crafts sometimes worked in teams, all skilled work was assigned along craft lines. Unlike those cases, the record establishes that the Employer's field employees who work primarily in one trade at times perform the skilled work of the other trade.

¹⁹ As the record fails to establish that the Truckdriver regularly performs skilled installation and service work for a substantial period of his working time, I shall not include him in the bargaining unit as a dual-function employee, but shall include him based on his community of interest with field employees. *Medlar Electric, Inc.*, 337 NLRB No. 133 (2002); *Pacific Lincoln-Mercury*, 312 NLRB 901 fn. 4 (1993).

the Plant Clerical/Expeditor does not share a community of interest with the other employees, and I shall exclude her from the unit. Cf. *R.L. Stott Co.*, 183 NLRB 884, 885.²⁰

D. Scott Smith and Christopher Smith

Assistant Installers Scott Smith and Christopher Smith are sons of the Employer's owner and President, Jeffrey A. Smith. As Section 2(3) of the Act specifically excludes from the protection of the Act "any individual employed by his parent or spouse," they are excluded from the proposed bargaining unit. *NLRB v. Action Automotive, Inc.*, 469 U.S. 490, 495 (1985); *Bridgeton Transit*, 123 NLRB 1196 (1959).

V. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The Petitioner claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.²¹

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time Installers, Assistant Installers, Service Technicians, and Truckdrivers employed by the Employer, excluding all other employees, Plant Clerical/Expeditor, office clericals, guards and supervisors as defined in the Act.

6. The Petitioner has not indicated whether it wishes to proceed to an election in a unit larger than the unit for which it petitioned. If it wishes to proceed, the Petitioner's showing of interest may now be inadequate due to the additional employees included in the unit as a result of this Decision. Accordingly, the Petitioner has 10 days from the issuance of this Decision to

²⁰ In that case, the Board included a receiving and inventory clerk in an HVAC service and installation employee unit where, among other things, he sometimes went out to the job sites, and he was an oil burner specialist who had conducted classes for the unit employees.

²¹ Because the collective-bargaining agreement between the Employer and Steamfitters Local 420 is a Section 8(f) pre-hire agreement, it does not bar the instant petition. *John Deklewa & Sons*, 282 NLRB 1375, 1385 (1987).

augment its showing of interest, if necessary. If the Petitioner fails to submit an adequate showing of interest within this period, the petition will be dismissed without further order. The Direction of Election set forth below is thus conditioned on the Petitioner having an adequate showing of interest.

7. The Party in Interest indicated at the hearing that if the Regional Director finds that the petitioned-for unit is inappropriate and that the appropriate unit includes all field employees, it would seek to intervene in the election. Inasmuch as the Party in Interest represents some field employees pursuant to its Section 8(f) agreement with the Employer, it shall be permitted to intervene. See NLRB Casehandling Manual (Part Two) Representation Proceedings Sec. 11022.1.

VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for the purposes of collective bargaining by **Sheet Metal Workers' International Association, AFL-CIO, Local 19, or by Steamfitters Local Union No. 420 of the United Association of Journeymen & Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, or by No Union.** The date, time, and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

A. Eligible Voters

The eligible voters shall be unit employees employed during the designated payroll period for eligibility, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Additionally, eligible are those employees in the unit who have been employed for a total of 30 working days or more within the period of 12 months, or who have had some employment in that period and have been employed for a total of 45 working days within the 24 months immediately preceding the payroll period ending immediately preceding the date of this Decision, and also have not been terminated for cause or quit voluntarily prior to the completion of the last job for which they were employed.²² Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are 1) employees who have quit or been discharged for cause after the designated payroll period for eligibility, 2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and

²² *Steiny & Co.*, 308 NLRB 1323 (1992); *Daniel Construction*, 133 NLRB 264(1961), modified in 167 NLRB 1078 (1967).

3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within **7** days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the *full* names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election, only after I shall have determined that an adequate showing of interest among the employees in the unit found appropriate has been established.

To be timely filed, the list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106 on or before **November 7, 2003**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (215) 597-7658. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **November 14, 2003**.

Signed: October 31, 2003

at Philadelphia, PA

/s/

DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four

Classification Index Numbers

440-1760-9167-8200

440-1760-9167-8267

460-7550-7500

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